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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,457	07/19/2002	Jean-Michel Gaulliard	022650-690	6847
21839	7590	02/25/2004	EXAMINER	
BURNS DOANE SWECKER & MATHIS L L P			PRYOR, ALTON NATHANIEL	
POST OFFICE BOX 1404			ART UNIT	
ALEXANDRIA, VA 22313-1404			PAPER NUMBER	

1616

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/070,457

Applicant(s)

GAULLIARD ET AL.

Examiner

Alton N. Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 18-69 is/are pending in the application.
- 4a) Of the above claim(s) 24, 25 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 42-69 is/are allowed.
- 6) ☐ Claim(s) 18, 19, 21-23, 26-37, 39-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

I. Rejection of claims 18,19,21-23,26-37,39-41 under 35 USC 103(a) over JP '910 will be maintained in light of amendment filed 12/03.

Applicant argues that Sumitomo does not teach nitrocellulose as a moisture-retaining agent and there is no evidence on record which teaches that nitrocellulose is a moisture-retaining agent. Applicant argues that Sumitomo also does not teach an amount of nitrocellulose for his invention. Examiner argues that instant specification page 5 line 26 –page 6 line 4 defines moisture-retaining agent as cellulosic hydrophilic derivative. Nitrocellulose fits this definition. In a claim to a composition, a statement regarding the composition's intended use (moisture-retaining agent) has no patentable significance. Applicant argues that where the prior art discloses all the ingredients of the composition claims except for the instant amounts, Applicant must show the criticality of the amounts.

Applicant argues that Sumitomo vegetable present in an amount of 30% by weight which is considerably less than the minimum amount required by the instant invention. Examiner argues that 40% vegetable meal is not significantly different from 30% vegetable meal in the absence of unexpected results.

Applicant argues that the intended use for the Sumitomo's composition is applied to ants; whereas, the instant composition is applied to crops and soil. In a claim to a composition, a statement regarding the composition's intended use has no patentable significance.

Examiner maintains that with respect to amounts and particle sizes, one having ordinary skill would have been expected to optimize those parameters during routine experimentation. One would have been motivated to do this in order to develop the most effective composition.

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***Claim Objection / Allowable Subject Matter***

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not teach or suggest the vegetable meal as being corn meal. Claims 42-69 are allowable. The prior art does not disclose instant composition comprising cellulose and the instant compounds of claims 51-69. Also, see reasons for allowance in office action dated 7/11/03.

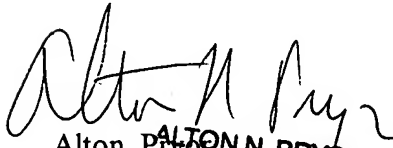
***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alton N. PRYOR  
Primary Examiner  
AU 1616